



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

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OHIO EPA NEDO

July 5, 2013

Mr. Kim K. Burke, Esq.
Taft Law Firm
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

Re: Canton Drop Forge, Inc. (CDF) property, 4575 Southway Street, SW, Canton, Ohio
Memorandum of Agreement (MOA) Track, Voluntary Action Program (VAP)

Dear Mr. Burke:

This letter follows our telephone conversations on June 6th and June 17th regarding the above-referenced property and is intended to supplement Ohio EPA's March 22nd letter regarding the CDF November 1, 2012 Initial Eligibility Determination for this property.

As I explained during our conversations, Ohio EPA and U.S. EPA Region 5 are discussing certain amendments to the 2007 MOA in light of the legislative expansion of VAP eligibility for certain petroleum underground storage tanks sites in 2011 (H.B. 153) and 2012 (S.B. 294).

In the course of these discussions, U.S. EPA Region 5 officials have acknowledged that brownfield properties with contamination issues to which the MOA does not apply (e.g., sites contaminated with PCBs) are not disqualified from participation in the MOA Track VAP if they are otherwise eligible under OAC rule 3745-300-02. Rather, these properties are subject to other federal and/or state environmental regulatory requirements, and while they may begin the MOA track process with these requirements unfulfilled, only when those regulatory requirements are satisfied do these sites qualify for the benefits described in the MOA. This is consistent with Ohio EPA's view of the "parallel track" you mentioned in our June 6th telephone conversation.

However, properties such as the above-referenced property are ineligible for the VAP as well as the MOA Track of the VAP until the eligibility barriers such as those identified in Ohio EPA's March 22nd letter are satisfactorily addressed and resolved. These eligibility barriers include U.S. EPA's pending enforcement action, as documented in the January 22, 2013 Notice of Violation (NOV).

I have reviewed the "background paper" that was forwarded to Ms. Tracy Freeman, Ohio EPA, on June 17th and offer the following observations regarding the property's eligibility for the VAP and CDF's "willingness to settle by an Administrative Order by Consent the violations alleged in the January 22, 2013 NOV while at the same time continuing the work under the Ohio VAP."

The VAP is a privatized, voluntary cleanup program. CDF's current efforts to complete the voluntary cleanup of the Canton facility this year, at a projected cost of over \$4 million, are commendable. Eligibility to participate in the VAP is verified by the certified professional upon issuance of a no further action (NFA) letter to a volunteer, as well as upon submittal of the NFA letter to the Director of Ohio EPA with a request for a covenant not to sue. OAC rule 3745-300-13(E)(18), (F)(3), (H), and (O)(4).

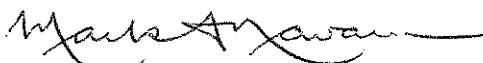
For the Canton facility, this presumes that CDF resolves the federal enforcement action initiated by the January 22nd NOV, and completes any requisite hazardous waste closure activities. For this reason, Ohio EPA's March 22nd letter noted that "Property areas subject to closure or the subject of federal enforcement, where applicable, could become VAP-eligible once the regulatory obligations are completed." See also OAC rule 3745-300-02(D).

The MOA Track of the VAP is different regarding the timing of the eligibility determination. This determination is made at the beginning of the voluntary action, upon submittal to and review by Ohio EPA of, *inter alia*, the Initial Eligibility Determination form. This form, dated November 1, 2012, was submitted to Ohio EPA by CDF. Ohio EPA's legal review of this form, as set forth in the March 22nd letter, identified hazardous waste closure requirements and federal enforcement as barriers to MOA Track eligibility at this time. Accordingly, until these eligibility barriers are satisfactorily resolved, the Canton facility is ineligible for the VAP MOA Track.

With respect to the Remedial Action Work Plan and the Phase II Property Assessment received in Ohio EPA's Northeast District Office on May 30th, Ohio EPA will postpone its review of these documents until the MOA Track eligibility barriers are satisfactorily resolved. Ohio EPA is encouraged by the statements in the background paper that "USEPA's enforcement matter will be resolved on a separate and parallel track to the VAP," and that "[o]nce the USEPA enforcement matter is resolved, CDF will be eligible to submit its No Further Action letter and request for a Covenant Not To Sue to Ohio EPA." However, until these eligibility barriers are satisfactorily resolved, the Canton facility remains ineligible for the MOA Track of the VAP.

The current ineligibility of the Canton facility for the VAP or the MOA Track does not mean that CDF may not proceed with its cleanup plans for the Canton facility this year.¹ Should you have any questions in this regard, or should you wish to meet to discuss this matter, please call me, at 614-644-3037.

Sincerely,



Mark J. Navarre
Supervising Attorney

cc: Eaton Weiler / Tom Krueger, U.S. EPA, Region 5, Office of Regional Counsel

¹ From communications with US EPA Region 5, it is our understanding that CDF's cleanup plans do not cover the entire facility, but are more narrowly tailored to contamination resulting from or commingled with the use of the surface impoundments to store and manage used oil. Presumably, any potential VAP "NFA" Letter would be similarly tailored.